

limited to affidavits, published articles, and official documents, regardless of the availability of the affiant or author for cross-examination, may be admitted in evidence, subject to the provisions of paragraphs (a), (c), and (d) of this section. The availability or non-availability of cross-examination shall be considered as affecting the weight to be accorded such evidence in any decision based upon the record.

(g) Official notice may be taken by the Presiding Officer or the Administrator of any matter which could be judicially noticed in the United States District Courts, and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show the contrary.

**§ 104.10 Hearing procedures.**

(a) Following the admission in evidence of the materials described in § 104.9(b), the Agency shall have the right at the commencement of the hearing to supplement that evidence or to introduce additional relevant evidence. Thereafter the evidence of each objector shall be presented in support of its objection and any proposed modification. The Agency staff shall then be given an opportunity to rebut or respond to the objectors' presentation, including at its option the introduction of evidence which tends to support a standard or standards other than as set forth in the Agency's own initially proposed standards. In the event that evidence which tends to support such other standard or standards is offered and received in evidence, then the objectors may thereafter rebut or respond to any such new evidence.

(b) The burden of proof as to any modification of any standard proposed by the Agency shall be upon the party who advocates such modification to show that the proposed modification is justified based upon a preponderance of the evidence.

(c) Where necessary in order to prevent undue prolongation of the hearing, or to comply with time limitations set forth in the Act, the Presiding Officer may limit the number of witnesses who may testify, and the scope and extent of cross-examination.

(d) A verbatim transcript of the hearing shall be maintained and shall constitute a part of the record.

(e) If a party objects to the admission or rejection of any evidence or to any other ruling of the Presiding Officer during the hearing, he shall state briefly the grounds of such objection. With respect to any ruling on evidence, it shall not be necessary for any party to claim an exception in order to preserve any right of subsequent review.

(f) Any party may at any time withdraw his objection to a proposed effluent standard.

**§ 104.11 Briefs and findings of fact.**

At the conclusion of the hearing, the Presiding Officer shall set a schedule for the submission by the parties of briefs and proposed findings of fact and conclusions. In establishing the aforesaid time schedule, the Presiding Officer shall consider the time constraints placed upon the parties and the Administrator by the statutory deadlines.

**§ 104.12 Certification of record.**

As soon as possible after the hearing, the Presiding Officer shall transmit to the hearing clerk the transcript of the testimony and exhibits introduced in the hearing. The Presiding Officer shall attach to the original transcript his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify.

**§ 104.13 Interlocutory and post-hearing review of rulings of the Presiding Officer; motions.**

(a) The Presiding Officer may certify a ruling for interlocutory review by the Administrator where a party so requests and the Presiding Officer concludes that (1) the ruling from which review is sought involves an important question as to which there is substantial ground for difference of opinion, and (2) either (i) a subsequent reversal of his ruling would be likely to result in substantial delay or expense if left